

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of)	Appeal No. 96-0087
)	
MIHEY V. REUTOV,)	DECISION
Appellant)	
_____)	January 26, 1999

STATEMENT OF THE CASE

The Appellant Mihey Reutov filed a timely appeal of an Initial Administrative Determination [IAD] issued on June 12, 1996 by the Restricted Access Management [RAM] program.¹ Mr. Reutov's application for sablefish quota share [QS] under the Pacific halibut and sablefish Individual Fishing Quota [IFQ] program was denied² because he did not prove that he had made qualifying landings of sablefish from a vessel owned or leased by him during the QS qualifying period. Mr. Reutov has adequately alleged that his interests are directly and adversely affected by the IAD. Because the record contains sufficient information on which to reach a final decision, and because there is no genuine and substantial issue of adjudicative fact for resolution, no hearing was ordered.³

ISSUE

Can Mr. Reutov qualify for QS even though he never made landings of sablefish during the QS qualifying period because of the EXXON VALDEZ oil spill in 1989?

BACKGROUND

RAM has no record that Mr. Reutov owned or leased a vessel that made landings of sablefish during the QS qualifying period, 1988-1990.⁴ Mr. Reutov did not submit proof, nor has he claimed, he made

¹The Restricted Access Management Division was renamed Restricted Access Management program, effective September 28, 1997. [NOAA Circular 97-09, 10 Sep 97].

²The IAD actually reads that Mr. Reutov qualifies for sablefish QS. According to Ms. Tracy Buck, a records specialist with RAM, the IAD should be read that Mr. Reutov did *not* qualify for sablefish QS.

³50 C.F.R. § 679.43(g)(1), formerly 50 C.F.R. § 676.25(g). All IFQ regulations were renumbered effective, July 1, 1996. *See*, 61 Fed. Reg. 31.271 (1996). The wording of the regulations was unchanged by the renumbering.

⁴50 C.F.R. § 679.40(a)(3)(i), formerly 50 C.F.R. § 676.20(a)(1). RAM's records show sablefish was landed on Mr. Reutov's fish permit from the F/V TYPHOON during 1986, 1987, and 1991.

any qualifying landings of sablefish. Mr. Reutov argues that he should qualify for an initial issuance of sablefish QS because the EXXON VALDEZ oil spill prevented him from participating in the sablefish fishery in 1989.

DISCUSSION

To qualify for an initial issuance of QS under the regulations of the IFQ program, as implemented by RAM, a person must have owned or leased a vessel that made legal landings of sablefish or halibut during a QS qualifying year. Mr. Reutov argues that he *would have* made qualifying landings of sablefish in 1989 but for the EXXON VALDEZ oil spill and that he should therefore qualify for QS.

The same issue was raised in Kenneth M. Adams.⁵ In that case, we ruled that QS could not be based on hypothetical landings, but only on actual landings, of sablefish or halibut. In doing so, we noted that the North Pacific Fishery Management Council had already considered the negative impact of the spill on commercial fishing and, for that reason, recommended a three-year qualifying period, which included the year before and the year after the spill. The Council's intent is that QS should not issue absent a showing of actual qualifying landings. The Council in 1994 voted to retain the provisions of the current regulations without modification to further accommodate hardship situations.

The reasoning and the authority relied upon in Adams applies equally to the instant appeal. Therefore, Mr. Reutov cannot qualify for QS based on landings that he might have made but for the EXXON VALDEZ oil spill.

FINDING OF FACT

There is no evidence in the record that Mr. Reutov owned or leased a vessel that made landings of sablefish during the QS qualifying period, 1988-1990.

CONCLUSION OF LAW

Mr. Reutov cannot qualify for QS based on landings that he might have made but for the EXXON VALDEZ oil spill.

DISPOSITION

The IAD that is the subject of this appeal is AFFIRMED. This Decision takes effect on February 25, 1999, unless by that date the Regional Administrator orders review of the Decision.

⁵Appeal No. 95-0004, March 22, 1995, *effective* April 19, 1995. *See also*, William M. Crump, Appeal No. 95-0024, June 25, 1995, *effective* July 27, 1995.

Any party, including RAM, may submit a Motion for Reconsideration, but it must be received at this Office not later than 4:30 p.m., Alaska Time, on February 5, 1999, the tenth day after the date of this Decision. A Motion for Reconsideration must be in writing, must specify one or more material matters of fact or law that were overlooked or misunderstood by the Appeals Officer, and must be accompanied by a written statement or Points and Authorities in support of the motion.

Randall J. Moen
Appeals Officer